

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,  
Plaintiff,  
v.  
VALLEY STATE PRISON, et al.,  
Defendant.

No. 1:19-CV-01797-ADA-GSA (PC)  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS IN FULL  
ORDER FOR CLERK TO CLOSE CASE  
(ECF Nos. 49, 61)

Plaintiff Nathaniel Marcus Gann (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 12, 2022, the assigned Magistrate Judge issued the findings and recommendations, recommending that Defendants’ motion for summary judgment for failure to exhaust administrative remedies be granted. (ECF No. 61.) On September 26, 2022, Plaintiff filed objections to the findings and recommendations. (ECF No. 65.)

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff’s objections, the Court finds the findings and recommendations to be supported by the record and proper analysis.

1 As Plaintiff's objections largely reiterate the arguments raised in his opposition to the  
2 motion for summary judgment, the Court finds no basis to overturn the findings and  
3 recommendations. First, Plaintiff argues that his first appeal, which was the group appeal, should  
4 not have been cancelled. (ECF No. 65 at 2.) The Court agrees with the Magistrate Judge that  
5 upon cancellation of the group appeal, Plaintiff was required to file an appeal individually, setting  
6 forth a specific set of facts that are unique to his appeal pursuant to Title 15 of the California  
7 Code of Regulations section 3084.2(h)(4). (ECF No. 61 at 49.) Therefore, the Court finds that  
8 Plaintiff's first appeal was correctly cancelled at the first level of review and the cancellation  
9 properly instructed Plaintiff to file an appeal individually.

10 Second, Plaintiff argues that his second appeal was wrongfully rejected because he was  
11 instructed to file the appeal as an individual and the body of his second appeal is sufficient to  
12 comply with the exhaustion requirement. (ECF No. 65 at 2.) The Court agrees with the  
13 Magistrate Judge that Plaintiff was required to file an appeal individually, stating the specific set  
14 of facts that are unique to his issues with Defendants' alleged non-compliance with the Jewish  
15 Kosher Diet Program ("JKDP"). (ECF No. 61 at 53.) Therefore, the Court finds that Plaintiff  
16 failed to show that she exhausted her administrative remedies with respect to his second appeal.

17 Third, Plaintiff argues that his third appeal was wrongfully rejected because Defendants  
18 have not provided any evidence that indicates that further appeal would not have been rejected.  
19 (ECF No. 65 at 3.) Plaintiff further asserts that no further remedy was available and that no  
20 further appeal on the Kosher issues could be filed. (*Id.*) The Court agrees with the Magistrate  
21 Judge that Plaintiff's third appeal exhausted all three levels of review, but the appeal concerned  
22 the cancellation decision of the group appeal, not the substantive claims with respect to the JKDP  
23 that Plaintiff brought forth in his complaints in this action. (ECF No. 61 at 57.) Therefore, the  
24 Court finds that Plaintiff failed to exhaust his administrative remedies for the claims at issue in  
25 this case.

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Accordingly,

1. The findings and recommendations, (ECF No. 61), are ADOPTED IN FULL;
2. Defendants' motion for summary judgment, (ECF No. 49), is GRANTED;
3. Defendants' motion to dismiss, (ECF No. 48), is DENIED as moot;
4. This action is DISMISSED, without prejudice, for failure to exhaust administrative remedies before filing suit; and
5. The Clerk is directed to CLOSE this case.

IT IS SO ORDERED.

Dated: October 26, 2022

  
UNITED STATES DISTRICT JUDGE